HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE MS JUSTICE G.ROHINI

WRIT APPEAL No.875 OF 2007

Between:

Telladarla Obanna

. . .Appellant

AND

The Government of Andhra Pradesh and others

. . .Respondents

:: JUDGMENT ::

Counsel for the appellant : Shri S.Niranjan Reddy

Counsel for respondent Nos.1 to 4: Government Pleader for Revenue (Assignment)

Counsel for respondent Nos.5 & 6 : Shri Nimmagadda Satyanarayana

26th October, 2007

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PER G.S.SINGHVI, CJ

This is an appeal for setting aside the order of the learned Single Judge, who rejected the appellant's prayer for condonation of 97 days delay in filing petition for review of order dated 14.11.2006 passed in Writ Petition No.11995 of 1991.

In the writ petition filed by him, the appellant challenged G.O.Ms.No.751, Revenue (Asn.IV) Department, dated 28.8.1991 whereby the State Government cancelled the assignment of land measuring Ac.4-00 in Survey No.165/3 of Kolumulapalli Village, Chintakommadinne Mandal, Kadapa District made in his favour and directed Collector, Kadapa to keep the land as communal poramboke for use as burial ground or for any other communal purpose. The learned Single Judge noted that the land assigned to the appellant was adjacent to a burial ground and Eedgah and held that the State Government did not commit any illegality by canceling the assignment.

The appellant challenged the order of the learned Single Judge in Writ Appeal No.164 of 2007, which was allowed to be withdrawn on 19.2.2007 with liberty to the appellant to seek review of the order passed in Writ Petition No.11995 of 1991. After one month and two days, the appellant filed petition under Order 47 Rule 1 of the Code of Civil Procedure for review of order dated 14.11.2006. The same was numbered as Review WPMP (SR) No.29525 of 2007 because it was delayed by 97 days. The appellant also filed WPMP No.7500 of 2007 under Section 5 of the Limitation Act for condonation of delay in filing the appeal. In paragraph 2 of the affidavit filed in support of the

condonation application, the appellant averred as under:

"2. I submit that the above Review Writ Petition Miscellaneous Petition is filed seeking to review the order dated 14-11-2006 made in W.P.No.11995 of 1991. It is necessary to point out here that, aggrieved by the order, dated 14-11-2006 made in W.P.No.11995 of 1991 I was constrained to file W.A.No.164 of 2007 on the file of this Hon'ble Court. The said Writ Appeal came up for admission on 19-02-2007 and on that day this Hon'ble Court vide order, dated 19-02-2007 was pleased to dismiss the Writ Appeal granting liberty to file Review Petition seeking review of the order, dated 14-11-2006 made in W.P.No.11995 of 1991. It is necessary to point out here that the Writ Appeal was filed within limitation. However, the Writ Appeal was taken up for admission on 19-02-2007. The copy of the order, dated 19-02-2007 made in W.A.No.164 of 2007 is furnished to me on 15-03-2007. As such, there is a delay of 65 days in filing the above Review Writ Petition Miscellaneous Petition. The delay occurred in filing the above Review Petition Miscellaneous Petition is neither willful nor wanton except for the reasons stated above. Under these circumstances, I am constrained to file the present Writ Petition Miscellaneous Petition seeking to condone the delay of 97 days in filing the above Review Petition. Unless this Hon'ble Court is pleased to condone the delay of 65 days in filing the above Review Petition, I will be put to grave and irreparable loss."

The learned Single Judge observed that when the counsel for the petitioner himself sought leave of the Division Bench to withdraw the writ appeal and prefer a review petition, nothing prevented him from filing the review petition immediately thereafter, and that the cause shown was not sufficient for condoning the delay in filing the review WPMP.

We have heard learned counsel for the parties and scrutinized the record. Ordinarily, the appellate court is extremely slow to interfere with the discretion exercised by the learned Single Judge in deciding the application for condonation of delay, but keeping in view the facts incorporated in para 2 of the affidavit filed in support of the application for condonation of delay, we are inclined to set aside the order under challenge.

In **Collector, Land Acquisition v. Katiji**[1], the Supreme Court gave a new dimension to the meaning of the term "sufficient cause" used in Section 5 of the Limitation Act and held:

> "The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "*merits*". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice – that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:
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> "*1.* Ordinarily a litigant does not stand to benefit by lodging an appeal late.
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> 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
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> 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
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> 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
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> 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

> 6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
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> Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

If the order under challenge is examined in the light of the proposition laid down by the Supreme Court, it is not possible to agree with the learned Single Judge that the cause shown by the appellant

was not sufficient. In our opinion, the filing of review petition within one month and two days of the dismissal of the writ appeal does not indicate any negligence on the part of the appellant, who naturally depended on the advice given by his counsel to wait till the receipt of copy of the order of the Division Bench.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and delay of 97 days in filing the review petition is condoned. The same may now be registered and listed before the learned Single Judge for appropriate order.

G.S.SINGHVI, CJ

26th October, 2007

G.ROHINI, J

svs

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[1] AIR 1987 SC 1353